

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

GARY W. MOODY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:12-cv-907-TWP-DML
)	
RAY LAHOOD, et al.,)	
)	
Defendants.)	

Entry Directing Further Proceedings

One of the claims asserted by the plaintiff is for review pursuant to the Administrative Procedures Act, 5 U.S.C. § 701 (“APA”). Pursuant to the Act, “[a] person suffering legal wrong because of an agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

The APA authorizes federal courts to set aside agency actions that are either unconstitutional, *see* 5 U.S.C. § 706(2)(B), or are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *See id.* § 706(2)(A). Also, pursuant to the APA, a court may compel “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The elements of a claim under § 706(1) are the existence of a discrete, ministerial duty; a delay in carrying out that duty; and a determination that the delay was unlawful or unreasonable in light of prejudice to one of the parties. *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 65 (2004).

If there has been a decision which the plaintiff challenges pursuant to the APA, that decision must be clearly identified. The plaintiff shall have **ten (10) working days** from the issuance of this Entry, **or until July 24, 2012** in which to **supplement his complaint** by

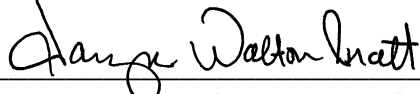
identifying the administrative decision to which he seeks review under the APA or, if the matter is presented under § 706(1), by identifying the “agency action unlawfully withheld or unreasonably delayed” and the duty pertaining to such withheld or delayed agency action.

IT IS SO ORDERED.

Date: 07/10/2012

Distribution:

GARY W. MOODY
299 1/2 Madison Street
Franklin, IN 46131



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana